D O M E S T I C W O R K E R S A N D L E G I S L A T I O N

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U. S. Department of Labor
Women's Bureau
Washington

DOMESTIC WORKERS AND LEGISLATION

"Social security we need!
Social security indeed!
March we forth two million strong
Workers all, but stand alone
While all legislative measures pass us by!"

Written by domestic workers at a YWCA Industrial Conference and sung lustily and feelingly upon many occasions, these lines ring true in their expression of the general position of household employees under our State and Federal labor laws today.

"Social security" they have not. They are excluded from major benefits of the social security program. Because in no sense can they be considered workers in interstate commerce, the Federal Fair Labor Standards Act (popularly known as the Wage and Hour Act) passes them by. Only one of the 43 States with hour laws covering some groups of women workers — Washington — sets any legal limits to the hours household workers may be employed and only 1 of 25 States with minimum-wage laws— Wisconsin — has set a wage order for their protection. In but 1 State— California--is an employer compelled to insure her domestic employees under a Workmen's Compensation Act.

Why these exclusions? There are several reasons. Perhaps the most valid deals with the difficulty of enforcing laws applying to almost as many employers as workers. The job of policing individual households, if left to State and Federal officials, would be almost prohibitive as to time and expense. In the second place, it has been difficult in the past to get the support of women's organizations for legislation affecting domestic workers. A third reason is the fact that household employees are rather a nebulous group occupationally. The duties of such employees are so unstandardized that determination as to exact coverage under this classification is bound to be difficult. A fourth reason relates to the fact that at present domestic workers are not organized; they have no direct channel of their own making through which to press

for measures in their interest. All laws — good as well as bad — are enacted because of positive action on the part of somebody or of many people. With domestic workers politically and organizationally inactive, interest in their problems has been insufficient to effect solution of these problems through legislation.

But this latter situation is changing markedly. Domestic workers are becoming vocal through various organizations and the educational program calling attention to their needs is making considerable headway. Even 2 years ago there were few advocates among labor law administrators for wage, hour, and other laws covering household employees, again not because such laws were not eminently desirable but because obstacles to their enforcement seemed insurmountable. Organizations with practical legislative experience shied away from efforts to have enacted laws so difficult to administer. But something is happening to change people's minds. From all sections of the country the demand that domestic workers along with farm workers shall not be groups apart in relation to labor laws has been felt so strongly that official opinion is changing. Now the attitude is becoming one of: "Well, we know the problem is a difficult one but not insurmountable. Probably we shall have to develop new enforcement techniques and it is going to be very expensive but with time and patience something definite can be accomplished. These workers must have a measure of protection."

The clearest evidences of this new attitude are found in relatively recent official reports. At the Fifth National Conference on Labor Legislation, which met in Washington in November 1938 at the invitation of Secretary of Labor Perkins, a resolution was passed which recognized that while labor laws applying to both domestic service and agriculture present special problems, still these groups of workers should "be brought under labor laws as rapidly as possible."

The extension of social security benefits to household workers was recommended to President Roosevelt by the Social Security Board in its report of December 1938 suggesting changes in the Act, and the report was transmitted by the President to Congress on January 16, 1939. With regard to old-age insurance the report stated that "the Board recommends

that the exception of domestic service be eliminated, with a reasonable time allowed before the effective date. It is believed that the principal administrative difficulties with respect to domestic service will be overcome, * * * when the individuals affected become generally informed as to the benefits and obligations of coverage."

The recommendation concerning unemployment compensation stated that, "In the case of domestic service in a private home, the difficulties of extending unemployment compensation are far less serious than in agriculture. The fact of unemployment is much easier to determine. The chief problem here relates to the determination and collection of contributions. The Board believes domestic employees can and should be covered by the unemployment insurance provisions of the act, provided sufficient time is allowed for the States to perfect their administrative procedures."

From the 1939 report of the Workmen's Compensation Committee of the American Association for Labor Legislation comes the statement that, "It is believed that sufficient progress has now been made in public education on the problem, and in the development of efficient and economical machinery for insuring the employer against his compensation liability, to justify the inclusion in the system of all employments."

The most recent recommendation as to labor law coverage of domestic workers is international in scope. Last December [Nov. 21-Dec. 2] at the International Labor Conference, meeting in Habana, Cuba, the committee on work of women and juveniles adopted the following resolution:

> "The employment of women in domestic service and in agriculture, cattle and dairy farming, should be regulated by adequate social legislation prescribing standards of hours, wages and other working conditions, etc."

But the Federal and State officials have not stopped with general recommendations as to the desirability of extending coverage of labor laws to domestic workers. They have made practical suggestions as to the best steps to take immediately. And to groups of household

employers and workers interested in formulating legislation in their own States these suggestions should prove most useful and significant. They should be considered carefully in relation to existing State laws and enforcement agencies before action of any kind is taken.

The 1938 National Conference on Labor Legislation made the following recommendations:

> "Wage collection and workmen's compensation provisions can be applied immediately, and have been applied in some States. Farmers and householders, as well as other employers, should be protected against damage suits, and workers injured in these occupations should be assured regular compensation and medical care in the same manner as workers in other occupations.
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> "It is suggested that the first step in regulating the work of domestic servants should be application of the State minimum-wage laws to such workers; in nine 1/ States the present laws could be so applied; in the remainder an amendment would be required. Through setting a standard workweek and an overtime rate, the hours could be indirectly affected, and at the same time a certain flexibility would be preserved. The committee urges that wage boards for domestic service be set up in States whose laws make this possible, and in States where wage boards cannot be set up, that the law be amended. In drafting new legislation, coverage should be broad enough to permit wage boards to be set up for domestic service.
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> "The committee believes that wherever possible it is desirable to include domestic service under the general hours' law, although it recognizes that special provision in regard to maximum hours, spread of hours, and posting would have to be made either in the law, or by administrative ruling for this type of work.

1/ (California, Colorado, Kansas, Minnesota, Oklahoma, Oregon, Utah, Washington, and Wisconsin.) In Minnesota the attorney general held in 1933 that the legislature did not intend the minimum-wage law to apply to household employees.

> It is felt that special efforts must be made to overcome the opposition to extending the labor laws to domestic service and that these efforts must take the form of educating employers, particularly women, to the advantages of setting standards of employment for household help, as one of the means of attracting a more efficient labor supply."

In the past, perhaps the largest part of the educational program has been assumed by employer groups. From now on it is going to be increasingly necessary for workers also to accept responsibility in this field. A major part of the job of enforcing labor laws covering them is going to fall on their shoulders. To function in this respect they will have to work together within unions and without. Organized workers are in a position to report labor law violations when individual workers are afraid to do it for fear of losing their jobs.

An example of the need for employee cooperation in labor law enforcement is found in the case of the 60-hour week for domestics in the State of Washington. An official in the State who has watched closely the administration of the law made this statement:

> "There is a penalty attached to the law making violation a misdemeanor. It seems, however, that few if any domestics are willing to risk losing employment by invoking this penalty clause. * * * domestics shrink from individually threatening a recalcitrant employer with the law because of the knowledge that they would have nothing to gain personally and would not only be in danger of losing their position but would jeopardize their chances of obtaining another. * * * Finally, there is a movement on foot to organize the domestics. In the opinion of many interested observers of the effects of the 60-hour law for domestics, unionization of the employees will be necessary before the full effects of the law can be obtained."

To date the recommendations of State and Federal officials in 1938 and 1939 relating to the coverage of domestic workers by labor laws have had no concrete results other than the Workmen's Compensation Law

in California, to which reference has already been made, and the Alaska 60-hour-week law. In 1939, 44 State legislatures were in session. A number of bills were introduced which sought to regulate the hours or wages of domestic workers or include them under workmen's compensation provisions. Among these were bills in three States — Illinois, Massachusetts, and New York — that would have amended the State minimum-wage laws to cover household employees; a bill providing a minimum wage of $30 a month for such workers in Washington; and hours-limitation bills in California and New York. In several States household workers were covered by wage-hour bills. In 1940, three types of bills covering domestic employees were introduced into the New York State Legislature — covering hours, wages, and workmen's compensation. Though none of these bills were passed, either in 1939 or 1940, their introduction indicated a new trend.

In 1941, 43 State legislatures are in session. Information as of February 10, as to pending legislation, shows that bills have been introduced in California and New York to limit the working hours of household employees; in Massachusetts and New York, to amend the minimum-wage laws to apply to domestic service; and in Michigan, to include household workers in the minimum-wage provisions of a wage and hour bill. In the U.S. Congress, a bill has been introduced in the House to apply old-age insurance and unemployment compensation features of the Social Security Act to domestic service.